

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-v-

ALEXANDER FERNANDEZ,

Defendant.  
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17-CR-167 (JMF)

MEMORANDUM  
OPINION AND ORDER

JESSE M. FURMAN, United States District Judge:

Defendant Alexander Fernandez moves, with the assistance of appointed counsel, for compassionate release. *See* ECF Nos. 76, 79, 91. Upon review of the parties’ papers, the motion is denied substantially for the reasons set forth in the Government’s response. *See* ECF No. 92. In brief, Mr. Fernandez’s argument — which depends largely, if not entirely, on the risks relating to COVID-19 — falls short both because he has been fully vaccinated with the Pfizer vaccine *and* because he tested positive to, and recovered from, COVID-19. *See* ECF No. 91, at 2. As a result, he “now has significant protection against serious illness or death should he contract COVID-19.” *United States v. Singh*, No. 4:15-CR-00028-11, 2021 WL 928740, at \*3 (M.D. Pa. Mar. 11, 2021); *see also, e.g., United States v. Matera*, No. 02-CR-743 (JMF), ECF No. 452, at 1-2 (S.D.N.Y. June 3, 2020) (denying a motion for compassionate release in part because the defendant had tested positive to, and recovered from, COVID-19). Thus, whether the issue is considered in reference to the existence of “extraordinary and compelling reasons” justifying relief under 18 U.S.C. § 3582(c)(1)(A), or to the sentencing factors set forth in 18 U.S.C. § 3553(a), the result is the same: Mr. Fernandez fails to show that relief is warranted due to the risks of COVID-19. *See Singh*, 2021 WL 928740, at \*3 & n.36 (citing cases).

Separate and apart from that, several other considerations relevant to the Section 3553(a) analysis weigh strongly against relief, including but not limited to:

- the egregious nature of Mr. Fernandez’s offense (which prompted the Court to note at sentencing that it might have imposed a higher sentence but for the statutory maximum);
- the nature of Mr. Fernandez’s criminal history;
- the relatively small portion of the sentence that Mr. Fernandez has served to date (barely twenty percent); and
- the fact that conditions at FCI Cumberland, where Mr. Fernandez is incarcerated, are not that bad at the moment and appear to be improving.


*See* ECF No. 92, at 1-3, 7-8; *see also* <https://www.bop.gov/coronavirus/> (last visited May 11, 2021) (reporting, at present, zero positive inmates and only two positive staff members and that 36% of the inmate population (410 out of 1,136) is fully vaccinated).

Accordingly, the motion is denied. That denial, however, is without prejudice to a new application “should future evidence demonstrate that new COVID-19 variants render the [Pfizer] vaccine significantly less effective at preventing serious illness or death from COVID-19, such that [Mr. Fernandez] is at a substantial risk of serious illness or death from a COVID-19 infection.” *Singh*, 2021 WL 928740, at \*4.

The Clerk of Court is directed to terminate ECF Nos. 76 and 91.

SO ORDERED.

Dated: May 11, 2021  
New York, New York

  
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JESSE M. FURMAN  
United States District Judge